

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jerry Smith,

Plaintiff,

vs.

Riffle, R. Goodman, Dr. Hoey,
L. Cross, Wright, Gio Ramirez,

Defendants.

)
) C/A No. 4:17-2499-MBS
)

OPINION AND ORDER

Plaintiff Jerry Smith is an inmate in the custody of the Federal Bureau of Prisons who currently is housed at FCI-Williamsburg in Salters, South Carolina. Plaintiff, proceeding pro se and in forma pauperis, filed a complaint on September 18, 2017, alleging that Defendants Riffle, R. Goodman, Dr. Hoey, L. Cross, Wright, and Gio Ramirez violated his rights under the Eighth Amendment by denying him a special diet. Plaintiff also contends Defendants retaliated against him for his request by changing his medication. See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 397 (1971). In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling.

Defendants filed a motion to dismiss or, in the alternative, for summary judgment on February 26, 2018. Among other things, Defendants assert that Plaintiff has failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e(a). By order filed February 27, 2018, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Magistrate Judge advised Plaintiff of the dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately. Plaintiff filed no response. On June 22, 2018, the Magistrate Judge

granted Plaintiff ten days from the date of his order to file a response to Defendants' motion. Plaintiff specifically was advised that failure to file a response could result in a recommendation that his case be dismissed for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). Plaintiff did not respond to the Magistrate Judge's order.

On July 19, 2018, the Magistrate Judge filed a Report and Recommendation in which he recommended that the within action be dismissed with prejudice pursuant to Rule 41(b) for failure to prosecute. The Magistrate Judge alternatively recommended that Defendants' motion to dismiss be granted and the case dismissed without prejudice for failure to exhaust administrative remedies. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation and incorporates it herein by reference. The complaint is dismissed pursuant to

Rule 41(b) with prejudice for failure to prosecute.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

August 13, 2018